

December 28, 2005

Post Confirmation Trust for
Fleming Companies, Inc.
5801 N. Broadway Ext Ste 100
Oklahoma City, OK 73118

ATTN: Steve Eaton

KIRKLAND & ELLIS LLP
AND AFFILIATED PARTNERSHIPS

200 East Randolph Drive
Chicago, Illinois 60601
FEIN 36-1326630

Inv.# 2984338

IN THE MATTER OF **Berry, Wayne Litigation**
 File No. 41445-0006

For legal services rendered through November 30, 2005 (see attached Description of Legal Services for detail)	\$ 67,877.50
For disbursements incurred through November 30, 2005 (see attached Description of Expenses for detail)	\$ 2,035.20
Total for legal services rendered and expenses incurred	\$ 69,912.70

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Summary of Hours Billed

<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Damian D Capozzola	83.75	515.00	43,131.25
Eric C Liebeler	7.00	625.00	4,375.00
Romana O Samad	27.00	340.00	9,180.00
Richard L Wynne	1.75	775.00	1,356.25
Allison Mayo Andrews	.50	200.00	100.00
Neal F San Diego	88.50	110.00	9,735.00
Total	208.50		\$ 67,877.50

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Description of Legal Services

<u>Date</u>	<u>Hours</u>	<u>Name</u>	<u>Description</u>
11/01/05	3.00	Neal F San Diego	Index correspondence with attachments into case management database.
11/01/05	2.25	Damian D Capozzola	Communications and analysis re e-mails from T. Hogan, Guidance software issues, and trial preparation issues.
11/02/05	1.25	Damian D Capozzola	Communications re correspondence from T. Hogan; analysis of and attention to Guidance production issues.
11/02/05	.50	Eric C Liebeler	Discuss case status with Core-Mark.
11/03/05	.25	Richard L Wynne	Analyze D. Capozzola letter to S. Loretz re Hawaii litigation.
11/03/05	3.50	Neal F San Diego	Index pleadings with attachments into case management database.
11/03/05	1.00	Damian D Capozzola	Finalize draft of jury instructions and communications re same; communications and analysis re scheduling and staffing issues; review communications from T. Hogan and analysis and internal communications re same; analysis re profits issues and communications with J. Kinrich re same.
11/04/05	4.50	Neal F San Diego	Organize and prepare documents for use by attorney as exhibits to letter brief for the discovery master.
11/04/05	2.75	Damian D Capozzola	Communications re B. Dechter travel and testimony issues; review and revise letter to C. Matsui and select exhibits re same; review and analysis of Berry motion re Guidance OSC and draft response.
11/04/05	.50	Eric C Liebeler	Review settlement offer; discuss with L. Smith.
11/07/05	3.50	Neal F San Diego	Index correspondence with attachments

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			into case management database.
11/07/05	4.75	Damian D Capozzola	Draft outline and response to Berry motion and related documents re Guidance OSC and select exhibits for response; communications with L. Smith and M. Walker re same.
11/08/05	.50	Allison Mayo Andrews	Analysis of declarations of W. Berry for testimony for attorney review and use.
11/08/05	.75	Romana O Samad	Review J. Mollway's rules re jury instructions analyze and create instructions for trial.
11/08/05	2.00	Neal F San Diego	Document search re Berry's declaration for use by expert M. Walker.
11/08/05	3.75	Damian D Capozzola	Communications and analysis re revisions to Guidance OSC opposition and related Walker supplemental report; review and revise jury instructions.
11/09/05	4.50	Neal F San Diego	Index correspondence with attachments into Lotus notes database.
11/09/05	3.25	Damian D Capozzola	Review and revise jury instructions; communications with M. Walker and L. Smith re Guidance OSC opposition.
11/10/05	5.00	Neal F San Diego	Analyze and prepare correspondence with attachments for indexing (1.5); index correspondence with attachments into case management database (3.5).
11/10/05	2.00	Damian D Capozzola	Review L. Smith draft of Guidance opposition and communications re same.
11/11/05	.25	Richard L Wynne	Telephone conference with D. Capozzola and R. Cobb re C&S and Target meetings on sale issues.
11/11/05	4.00	Neal F San Diego	Index correspondence and pleadings with attachments into case management database.

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<u>Date</u>	<u>Hours</u>	<u>Name</u>	<u>Description</u>
11/11/05	2.50	Damian D Capozzola	Communications with M. Walker, L. Smith, and E. Liebeler re Guidance OSC issues and unallocated cluster issues; review and revise jury instructions.
11/11/05	2.75	Damian D Capozzola	Draft and revise pretrial statement.
11/12/05	.25	Damian D Capozzola	Communications re Berry pretrial statement and case management issues.
11/13/05	.25	Damian D Capozzola	Communications and analysis re case management and trial preparation issues.
11/14/05	.75	Richard L Wynne	Analyze October 27 transcript re Munalfo and Berry.
11/14/05	5.00	Neal F San Diego	Analyze and prepare a list of all motions filed for use by attorney to prepare for upcoming trial.
11/14/05	2.75	Damian D Capozzola	E-mails with L. Smith and A. Teranishi re pleadings and case management issues; oversee D. Silva re jury instructions; review and revise pretrial statement and communications re same.
11/15/05	1.00	Romana O Samad	Gather all filed documents related to briefings on injunctions.
11/15/05	2.50	Neal F San Diego	Obtain and prepare documents re preliminary injunction for use by O. Samad to prepare for a response.
11/15/05	3.00	Neal F San Diego	Revise list of motions issued during the post petition for use by attorney in preparation for upcoming trial.
11/15/05	3.25	Damian D Capozzola	Analysis of trial preparation issues and communications re same; review and revise jury instructions.
11/16/05	2.00	Neal F San Diego	Index correspondence with attachments into case management database.
11/16/05	4.00	Neal F San Diego	Index correspondence and pleadings with

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<u>Date</u>	<u>Hours</u>	<u>Name</u>	<u>Description</u>
			attachments into Lotus notes database.
11/16/05	1.00	Damian D Capozzola	Communications and analysis re trial preparation issues.
11/16/05	1.00	Damian D Capozzola	Review and revise pretrial documents; analysis re trial preparation issues.
11/17/05	2.50	Romana O Samad	Review and analyze prior injunction briefing for J. Mollway.
11/17/05	6.00	Neal F San Diego	Analyze and prepare correspondence and pleadings with attachments for indexing (1.5); index correspondence and pleadings with attachments into case management database (4.5).
11/17/05	2.25	Damian D Capozzola	Draft pretrial documents and communications re same; review and revise jury instructions.
11/18/05	2.50	Romana O Samad	Research and analyze legal standard for permanent versus preliminary injunction in copyright cases.
11/18/05	6.00	Neal F San Diego	Analyze and prepare correspondence and pleadings with attachments for indexing (1.0); index correspondence and pleadings with attachments into case management database (4.0); image correspondence and pleadings with attachments into database (1.0).
11/18/05	2.00	Damian D Capozzola	Prepare for and participate in conference call and communications re trial preparation issues, and analysis re same.
11/18/05	1.75	Eric C Liebeler	Review pleadings.
11/19/05	3.00	Neal F San Diego	Organize and prepare binders re Jury Instructions for use by E. Liebeler, D. Capozzola, L. Smith and L. Hosoda for the upcoming trial.
11/19/05	4.00	Neal F San Diego	Update case management database for use and review by attorney for the upcoming

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<u>Date</u>	<u>Hours</u>	<u>Name</u>	<u>Description</u>
			trial.
11/19/05	2.25	Damian D Capozzola	Review and revise jury instructions and communications with team members re same; communications re and review Guidance OSC motion; analysis of and attention to scheduling issues.
11/20/05	4.50	Damian D Capozzola	Review and analysis of Guidance OSC reply papers and communications with L. Smith and M. Walker re same; review and analysis of October 11, 2005 summary judgment transcript; review and revise pretrial documents, and analysis and communications with team members re trial preparation issues.
11/21/05	5.50	Neal F San Diego	Index pleadings with attachments into Lotus notes database (4.0); image pleadings with attachment into database (1.5).
11/21/05	2.75	Damian D Capozzola	Prepare, review, and revise pretrial documents, trial brief, and motions in limine; prepare for and participate in conference call re Guidance OSC issues.
11/21/05	1.00	Damian D Capozzola	Draft and revise trial brief; e-mail to summer clerks re trial research projects.
11/22/05	4.25	Romana O Samad	Review and analyze prior injunction orders from 9th circuit and Judge King in preparation for our opposition.
11/22/05	4.00	Neal F San Diego	Index correspondence with attachments into case management database.
11/22/05	.75	Damian D Capozzola	Communications with team members and analysis re pretrial preparation issues.
11/23/05	2.00	Neal F San Diego	Analyze and obtain cases cited for use by O. Samad in response to Berry's injunction motion.
11/23/05	1.00	Damian D Capozzola	Review and revise jury instructions and

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			communications with team members re same and case management issues.
11/23/05	1.25	Eric C Liebel	Review pleadings and draft jury instructions.
11/24/05	7.75	Damian D Capozzola	Review and revise jury instructions and communications re same; review and analysis of witness topics and profits issues, and communications re same; research, draft, and revise trial brief, and communications with L. Smith, L. Hosoda, O. Samad, and K. Salour re same.
11/25/05	.25	Damian D Capozzola	Communications and analysis re pretrial filings and research issues.
11/26/05	2.75	Damian D Capozzola	Communications with K. Salour and L. Smith and analysis re research issues; draft motions in limine re excluding T. Ueno and P. Johnson.
11/27/05	4.25	Damian D Capozzola	Draft, research, review, and revise motions in limine and trial brief; communications with team members re case management and strategy issues.
11/28/05	3.00	Romana O Samad	Research and gather copyright case law for to oppose motion for injunction.
11/28/05	4.00	Neal F San Diego	Index correspondence with attachments into case management database.
11/28/05	3.25	Damian D Capozzola	Communications and analysis with team members re trial preparation and briefing issues; draft, research, review and revise trial brief and motions in limine.
11/28/05	2.50	Damian D Capozzola	Review and revise trial brief and motions in limine on plane home from Hawaii.
11/29/05	8.00	Romana O Samad	Research and analyze case law for opposition to injunction.

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11/29/05	3.50	Neal F San Diego	Analyze and prepare correspondence with attachments for indexing (1.0); index correspondence with attachments into case management database (2.5).
11/29/05	5.75	Damian D Capozzola	Communications and analysis re Guidance hearing and scheduling issues; review and revise pretrial documents; communications with B. Dechter and analysis re same; review and analysis of Johnson deposition transcript.
11/29/05	3.00	Eric C Liebeler	Prepare for trial.
11/30/05	.50	Richard L Wynne	Conference with E. Liebeler and D. Capozzola re Berry trial, motions in limine, arguments and witness strategy.
11/30/05	5.00	Romana O Samad	Perform additional research to find 9th circuit cases where the court required a showing of irreparable harm for a permanent injunction; gather all cases cited by Berry to support his position that plaintiff needs only to show liability to get a permanent injunction.
11/30/05	4.00	Neal F San Diego	Index correspondence with attachments into case management database.
11/30/05	6.00	Damian D Capozzola	Communications and analysis re Guidance hearing and prepetition trial issues; review and revise pretrial documents; analysis and communications re trial strategy and planning issues.
	208.50		TOTAL HOURS

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Description of Expenses

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5/16/05	Local Transportation, Damian Capozzola, cabfare, Honolulu, Hawaii, 05/16/05, (Attend Deposition), supplement	30.00
7/19/05	Overtime Meals - Attorney, R. Samad, Overtime Meal-Attorney, Los Angeles, CA 07/19/05, (Document Preparation)	39.07
9/06/05	West Publishing, 9.05	8.24
9/14/05	West Publishing, 9.05	26.09
9/16/05	West Publishing, 9.05	28.49
9/18/05	West Publishing, 9.05	148.11
9/19/05	West Publishing, 9.05	57.87
9/23/05	West Publishing, 9.05	34.51
9/24/05	West Publishing, 9.05	45.81
9/25/05	West Publishing, 9.05	118.82
9/26/05	West Publishing, 9.05	77.11
9/28/05	West Publishing, 9.05	38.67
9/28/05	West Publishing, 9.05	62.26
9/29/05	West Publishing, 9.05	25.40
9/29/05	West Publishing, 9.05	74.64
9/30/05	West Publishing, 9.05	16.63
10/05/05	Library Document Procurement, Library Document Procurement - Nimmer on Copyright Sections 14.02[A], 14.02[B], 14.03[C], 14.03[D], 14.04[E], 14.04[F].	25.00
10/05/05	Library Document Procurement, Library Document Procurement - Federal Practice or Procedure Section 2737.	25.00
10/07/05	PACER SERVICE CENTER - Computer Database Research, Pacer Service Center usage, 7/05 to 9/05, Edgar Yep	.80
10/11/05	Telephone call to: HONOLULU, HI 808-256-5045	.95
10/11/05	Telephone call to: PALO ALTO, CA 650-331-0200	1.38
10/11/05	Telephone call to: LOSANGELES, CA 213-896-4544	1.09
10/14/05	GENESYS CONFERENCING, INC. - Telephone - 09/27/05 Conference call	6.41
10/14/05	GENESYS CONFERENCING, INC. - Telephone - 09/28/05 Conference call	11.90
10/14/05	GENESYS CONFERENCING, INC. - Telephone - 09/30/05 Conference call	2.61
10/17/05	Telephone call to: PALO ALTO, CA	.96

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10/31/05	650-331-0200 LEXISNEXIS - Computer Database Research - LexisNexis Database Usage for October, 2005	21.94
11/01/05	Fax Charge, 310-888-6388	1.50
11/02/05	Telephone call to: S SAN,CA 650-331-0200	.80
11/02/05	FedEx, Marty Walker, PALO ALTO, CA from: Neal San Diego	11.69
11/07/05	Telephone call to: IDABEL, OK 405-286-9860	1.40
11/08/05	Telephone, Damian Capozzola, Cellular Service, Cingular, 10/9/05-11/8/05, 11/08/05, (Telephone Charges)	7.26
11/10/05	FedEx, Ann Teranishi, HONOLULU, HI from: Damian Capozzola	15.00
11/14/05	GENESYS CONFERENCING, INC. - Telephone - 10/17/05 Conference call	.71
11/14/05	GENESYS CONFERENCING, INC. - Telephone - 10/17/05 Conference call	4.72
11/14/05	GENESYS CONFERENCING, INC. - Telephone - 10/24/05 Conference call	3.03
11/14/05	GENESYS CONFERENCING, INC. - Telephone - 10/25/05 Conference call	6.48
11/14/05	GENESYS CONFERENCING, INC. - Telephone - 10/27/05 Conference call	3.73
11/14/05	GENESYS CONFERENCING, INC. - Telephone - 11/09/05 Conference call	10.14
11/14/05	GENESYS CONFERENCING, INC. - Telephone - 11/10/05 Conference call	9.83
11/16/05	Telephone call to: STATE OF, HI 808-535-5711	1.40
11/16/05	Telephone call to: OAHU, HI 808-528-0100	1.60
11/16/05	FedEx, Marty Walker, PALO ALTO, CA from: Neal San Diego	12.14
11/19/05	FedEx, Lex Smith, HONOLULU, HI from: Neal San Diego	32.94
11/19/05	FedEx, Eric Liebeler- Hotel Guest, HONOLULU, HI from: Neal San Diego	32.94
11/19/05	FedEx, Lyle Hosoda, HONOLULU, HI from: Neal San Diego	32.94
11/19/05	Overtime Transportation, Neal San Diego, Personal Car Mileage, 2471 Loy Lane, Los Angeles to 777 S. Figueroa St., 11/19/05, (Overtime Transportation),	9.22

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11/19/05	19.46 miles travelled	
	Overtime Meals - Attorney, Damian	12.43
	Capozzola, Overtime Meal-Attorney, Los	
	Angeles, CA, 11/19/05, (Overtime Meals)	
	Scanned Images	27.00
11/21/05	CYNTHIA TANDO FAZIO - Court Reporter	40.64
	Fee/Deposition - Hearing transcript	
11/30/05	Telephone call to: STATE OF,HI	.80
	808-535-5711	
	Standard Copies	825.10
	Total Expenses	\$ 2,035.20